

Election Advisory Committee
1:00 p.m., May 22, 1997
Administration Boardroom, Robson Square Provincial Court
First Floor, Plaza Level, 800 Hornby Street, Vancouver, British Columbia

Attending:

Committee Members (alpha by Party):

British Columbia New Democratic Party: Brian Gardiner, Sherry Hyde (for Bruce Ralston)

Liberal Party of British Columbia: David George (with guests Sonja Sanguinetti, Jim Pipe, Cathy Nobes)

Progressive Democratic Alliance: David Massey

Reform Party of B.C.: Bruce Hallsor (with guest Ross Brearley)

Elections BC:

Robert A. Patterson, Chief Electoral Officer

Linda M. Johnson, Deputy Chief Electoral Officer

Nola Western, CA, Manager of Election Finances

Derek Coburn, Election Finance Officer

Linda Stagg, Administrative Assistant (Recording Secretary)

Welcome and Introductions:

Chair Robert Patterson called the meeting to order and welcomed the Committee members and their guests. Following are the amendments proposed by Mr. Patterson and discussions regarding them.

Proposal - Sections 155 (3) (l) & 157 (3) (k):

The statement of assets and liabilities should be accompanied by an audit report if the value of either exceeds a specific amount, e.g. \$10,000.

An organization (particularly a constituency association) may report significant amounts of assets or liabilities as part of the registration documentation, however, they may never file an audit report. In the case of a constituency association, most contributions may be made to the political party and any inflows or outflows of assets by way of transfers. There should be, at some point, an independent assessment of the financial state of the organization. For uniformity, these provisions should be applicable to both constituency associations and political parties.

Discussion:

Mr. Patterson pointed out that when an entity registers, it is not required to disclose who contributed to it prior to registration. If the entity has significant assets or liabilities, it should be required to file an audit report. There was substantial consensus.

Proposal - Section 159 (2) (b) (ii):

Once a constituency association is registered, with the proper authorization from the political party, it should not be necessary to continue to require a principal officer of the party to authorize every change in registration information of a constituency association.

Discussion:

There was no discussion and substantial consensus.

Proposal - Sections 170, 171:

The Act requires that a deregistered organization submit audited financial reports and any surplus funds, to be held in trust, following the deregistration. However, there is no deadline by which the organization is to do so. It is recommended that a deadline of six months be established.

Discussion:

There was no discussion around whether six months was sufficient time to 'clean up the books' after deregistration. The Committee was silent on this proposal.

Proposal - Section 177 (2) (b):

The Act requires that the financial agent for every registered political party, registered constituency association and candidate establish an account in a savings institution to process their respective financial affairs. A clarifying amendment is required to ensure that financial agents recognize that there must be established a separate account by each financial agent to prevent the combining of financial transactions and to ensure an adequate audit trail.

Discussion:

Mr. George said he agrees in principle, noting that the Liberal Party has a consolidated trust account for constituency associations which transfers funds to specific candidates. Ms. Western pointed out that transfers would have to be made from the trust account to an account for a specific candidate. Ms. Johnson added that if a number of candidates used a "pooled" bank account, it would be difficult to unravel in an audit.

A time lag at the beginning of an electoral event could be acceptable, but mingling of candidates' funds could be problematic during the campaign. Ms. Western said that an audit trail to separate contributions to the candidate from contributions to the constituency association is imperative.

Ms. Johnson pointed out that here we must use the narrower definition of "candidate".

Mr. Massey said he feels that tax receipts and proper records might be more effective than separate bank accounts. Mr. George added that he feels this is the auditor's problem.

Mr. Patterson said that Elections BC needs a better audit trail being able to track transactions to a particular bank account. Ms. Western noted that the *Election Act* requires that contributions be paid into and expenses be paid out of a bank account. Using the same account simplifies this.

Proposal - Section 178:

The Act restricts the authority of deputy financial agents to the receiving political contributions and the issuing of income tax receipts for those contributions. The Act should be amended to permit deputy financial agents to file financing reports in the absence or incapacity of the financial agent.

Discussion:

Mr. Massey proposed an amendment to Section 175 that might include a deputy in the definition of a financial agent. Mr. Patterson added that this may have broader implications than the filing of financial reports and Elections BC will give this further study.

Proposal - Section 179:

During the election there were candidates who, because of their professional designation, felt that they should be permitted to act as their own auditor. Clearly this is not acceptable and the Act should be amended to reflect this.

Discussion:

Mr. George and Mr. Massey said that they believe this breaches professional codes of conduct. Mr. Patterson will consult with the Institute of Chartered Accountants (ICABC) and other professional bodies before making a recommendation.

Proposal - Section 180 (5):

During an election, an organization or individual may wish to provide some service to all candidates. If that service is the same and equal for all candidates, it should not be considered a political contribution. Some examples from the 1996 election are: an organization with a particular issue interest wished to publish candidates' statements in relation to the issue and distribute the brochure, without comment, to its members; a company-town employer proposed to provide

flights on its own transport to candidates so they could attend an all-candidates meeting at the remote location. A parallel example can be found in section 185 (4) of the Act.

Discussion:

Mr. Gardiner asked if in a case where a candidate chose not to participate, if the offer would still be considered to have been made equally. Mr. Patterson replied that the service must be provided or offered equally. Mr. Gardiner further stated that he is uncomfortable with this, as some organizations profess to be non-partisan, but aren't really in practice, and this could potentially open up a problem. Mr. Hallsor said that his party wasn't as concerned about this perhaps as larger parties are.

Proposal - Section 180 (6):

1) The Act provides for vertical transfers between the various 'levels' of a registered political party, but there is no provision for horizontal transfers between entities at the same level, for example between registered constituency associations or between candidate campaigns. The horizontal reallocation of resources, as transfers, should be provided for in the Act.

2) Some political parties take advantage of some economies of scale by providing goods or services to their constituency associations at cost, e.g. postal services, photocopying, office supplies. Since the constituencies pay the party for these goods and services, they really don't represent transfers.

Discussion:

1) Mr. George said he supports this position. He said the BC Liberals resolved this with a transfer from one candidate to the party, followed by a transfer from the party to another candidate.

2) Ms. Sanguinetti spoke in favour of this proposal, and Mr. Hallsor noted that Reform candidates purchase advertising time and space together. Ms. Western said the legislation should read "to a registered constituency association or candidate".

Proposal - Section 183:

1) Promotional advertising may be supplied to a distributor (e.g. weekly newspaper, Canada Post) in anticipation of an election being called with the hope that it is published ("used") before the call. This would not then be considered 'election' advertising and not an election expense. However, if the publication of that material is delayed (or the election is called sooner than expected) and is published after the election is called, all of the costs associated with the advertising are election expenses as the advertising was used during the campaign period. An amendment should be made to the Act to clarify this situation.

2) Section 183 (3) provides that "a deficit incurred in holding a fundraising function during a campaign period is an election expense." Section 203 (1) (f) provides that "expenses incurred in holding a fundraising function if no deficit is incurred" are to be excluded from expenses subject to expenses limits. The Act is not clear about how one is to deal with costs incurred in holding a fundraising function that does incur a deficit. If both costs and the deficit itself were reported as separate election expenses, the amount of the costs would be counted twice. This needs to be clarified in the Act.

Discussion:

1) Mr. Patterson noted that material is considered to be used during the campaign period even if it was delivered to Canada Post prior to the Writs being issued. Ms. Hyde said that from her experience, third-class mail can take three weeks to be delivered to rural addresses. Mr. Hallsor said that Legislative Counsel can draft the legislation such that if Canada Post receives promotional material on or before a certain day, that material is not be considered an election expense.

2) Mr. Patterson underscored that the intent here was to eliminate double-counting. Mr. Massey said he preferred to "keep it simple", and that all expenses should be election expenses - period.

He also said there are too many forms. Ms. Johnson said that if the wording of the Act were amended, then Elections BC could simplify the form.

Proposal Form Users' Group:

Mr. Patterson proposed formation of a user group of election finance forms. This group would look at simplification and elimination of existing forms, and consider development of electronic forms. Ms. Sanguinetti said the Liberals would be very interested in participating. There was consensus that such a group would be very useful.

Proposal - Sections 183, 184:

In clause "(4) (b)" of both sections, the Act speaks of travel "to or within" an electoral district - but not travel "from" the electoral district. For candidates, this was temporarily dealt with by a Regulation referred to in section 183 (4) (f). A preferable solution would be to amend both sections.

Discussion:

Mr. Patterson said that this was addressed by Regulation during the May 1996 general election, but it is more appropriate for the Act to state "to, within and from" an electoral district.

Proposal - Section 186 (3):

Unregistered constituency associations cannot make political contributions. At the time of registration there is no requirement to disclose the sources of funds, which a constituency association may have had on hand for some time. If a constituency association became registered after the campaign period, it could transfer significant funds to "its candidate" to pay election expenses and the contributors of the funds would not be disclosed. The Act should be amended to prohibit the transfer of funds to a candidate in relation to a candidacy that took place before the organization's registration.

Discussion:

If an unregistered constituency association collected funds and registered following an election, that constituency association is not required to disclose contributors as part of its registration documentation. The constituency association, however, could then reimburse its candidate after General Voting Day. Ms. Western pointed out that some constituency associations were taken by surprise with the election call. They registered after the election period and then paid their candidates' expenses. This could become a way of not disclosing certain contributors.

Mr. Gardiner asked how many constituency associations were involved. Ms. Western replied that there were only three or four instances. Ms. Johnson noted the potential for a loophole, as they could declare their assets after the election and then reimburse their candidate.

Mr. Gardiner offered the following scenario: After an election, a \$100 contribution is made to an unregistered constituency association. The contributor does not know the party's internal arrangements. If the constituency association is unregistered, that contribution would not be disclosed. Ms. Western said the contribution could not be used to support a candidate and would not appear in annual financial reports.

Mr. Massey says he believes this favours existing parties over new parties, as parties start at 'grass roots', and then get province-wide support.

Mr. Hallsor said that if the issue here is disclosure, a constituency association could register and then transfer funds to its candidate, provided there is adequate disclosure. Here contributors get caught in a technicality.

Ms. Johnson said that a 'war chest' could be built up over a long period of time, but wouldn't serve the intention of the contributors if it couldn't be used to support a candidate.

Mr. George said an audit report would include a list of donors.

The Committee agreed by consensus to endorse this conditionally.

Proposal - Section 189 (3):

Amend to require financial agent to recover, cancel and retain tax receipts issued for prohibited contributions and instead of destroying them as is now required. This provides an assurance that invalid receipts were actually recovered and not used by the taxpayer. They will then be available for audit by the Commissioner of Income Tax.

Discussion:

Mr. Patterson and Ms. Western said that discussions have been held with the office of the Commissioner of Income Tax on how to determine if a receipt ever existed, if it was improperly issued, and if it was then destroyed. Ms. Sanguinetti said she believes tracking receipts is an onerous task for small parties without paid office staff. Mr. Pipe described this as a discouragement from taking on the job of financial agent.

If a receipt is unrecoverable, the best effort must be made to recover it.

Proposal - Section 193:

1) Amend to permit persons authorized in writing by the financial agent to incur election and contestant expenses and be reimbursed upon production of receipts.

The vastness of the Province and the particular geography of electoral districts often makes it impractical to expect the financial agent, of a political party or of a candidate, to incur and/or pay all election expenses. The Act does permit the financial agent to authorize others to incur election expenses, however, in a restrictive manner. The Act should be amended to permit those authorized in writing by the financial agent to incur and pay for election expenses and be reimbursed for the expenses from the designated account in a savings institution. Permit the same for leadership contestants.

2) Amend to permit the registered political party to pay for leadership contestant expenses of all contestants.

Political parties may have leadership contestants who do not have access to sufficient financial resources to allow travel throughout the Province or to undertake some other contestant activity. A party may wish to assist those contestants by paying for some expenses. The Act does not provide for this situation.

Discussion:

1) Currently the Act does not provide for a reimbursement process for expenditures incurred by members of the team of a party leader or leadership contestant, the Committee members agreed with this proposal.

2) Mr. Patterson said that the very least the legislation should allow for transfers, and Ms. Western noted that currently a party could give contributions to a leadership campaign. The Committee members agreed with this proposal.

Proposal - Section 207:

Amend to permit the filing of annual reports up to May 31.

As the March 31 deadline for filing annual financing reports is in the middle of the busy season for auditors, who may volunteer to perform electoral audits, it recommended that the deadline be moved to May 31.

Discussion:

The Committee indicated endorsement for this proposed amendment.

Proposal - Sections 207 (3) (d), 209 (2) (d), 210 (2) (d):

Amend to include the transfer of goods and services as well as money. This will make the reporting consistent with section 180 (6).

Discussion:

There was no discussion, and the Committee endorsed this proposal.

Proposal - Sections 207, 210:

In order for the financial reports to accurately and openly report the financial status of a filing entity, if that entity has controlled or affiliated organizations which impact on that status, those organizations should be included on a consolidated basis. A clarifying amendment is required.

Discussion:

Ms. Western stated that all financial transactions for all controlled organizations (like clubs and branches) must be consolidated and included in financial reports. Mr. George said that he had a philosophical problem with sections 154 and 155, and can't reconcile how the Nanaimo Commonwealth Holdings Society fits with the New Democratic Party, even if its fundraising is done in the name of the Party. The NCHS does not meet the prime purpose or definition as it cannot field candidates.

Ms. Western pointed out that some of the criteria the CICA considers when assessing control is significant influence, or the same members on the board of directors.

Ms. Hyde said the NDP's constituency associations may have up to three clubs, for example in Skeena there are clubs in Terrace and Prince Rupert. For purposes of annual filing, these clubs are part of the respective constituency association. Mr. Gardiner added that the NDP's party constitution speaks to authorization, sanction and controlling interest with regard to trusteeship and transfer of funds.

Mr. Hallsor further added his concern that the Committee was getting into unimportant minutia. He cited Saanich North and the Islands as an example, which may have some clubs on the various gulf islands which are social in nature and operate their own small accounts. There is also a separate University of Victoria club which promotes Reform BC at the University, and collects money from the Student Society according to a formula for political clubs on campus. It is not formally linked to any particular Reform constituency, but it does support the Party during and between elections.

Ms. Western asked if during an election campaign these organizations would be giving money to or otherwise supporting a candidate. Mr. Gardiner replied that the spirit of the Act is one of openness and disclosure, and any amendments should fall on the side of increased disclosure.

Proposal - Sections 209, 210:

Is 90 days too short a time to require filing of finance reports from an election?

This office received some feedback that 90 days was too short a time frame in which to prepare and submit election financing reports. However, the vast majority of filers did meet the 90 days. Is additional time required, e.g. an increase to 120 days?

Discussion:

From Mr. Patterson's research with other jurisdictions, most timeframes are from 120 days to four months. Ms. Sanguinetti noted that any extension "becomes like a university essay that keeps moving down the line." A time frame of at least 120 days was the general consensus.

Proposal - Section 212:

Amend to increase the time limit for filing supplementary reports to 45 days.

This office received some feedback that 30 days was too short a time frame in which to prepare and submit supplementary financing reports. Is additional time required, e.g. an increase to 45 days?

Discussion:

Ms. Sanguinetti said she feels two months would be appropriate, especially when a constituency association is required to search for data in order to reconstruct reports.

Proposal - Section 213:

1) Remove the requirement that financing reports be prepared in accordance with "generally accepted accounting principles" and replace with an accounting basis that is prescribed by Regulation.

The term "generally accepted accounting principles" (GAAP) has a very strict interpretation. GAAP is established by the Canadian Institute of Chartered Accountants and requires significantly more disclosure than the *Election Act*. Reference to GAAP should be removed from the Act and another standard be prescribed by Regulation, for example using the accrual basis of accounting. This will give flexibility for all who have to work with the Act and be more easily amended to meet changing needs.

2) Provision to allow for electronic filing (diskette and/or Internet) of financing reports (annual, election and leadership) may be done by Regulation without amending legislation; but section 213 (1) (a) requires an accompanying signed declaration as to the accuracy of the filing; an amendment will be required.

To facilitate the filing of financing reports, it is planned to develop software for electronic filing - both on diskette and via the Internet. Section 213, however, currently requires an accompanying signed declaration as to the accuracy of the filing. An amendment will be required to permit a separate filing of the declaration if the filing is submitted electronically.

Discussion:

1) Ms. Western noted that there are instances where the Act contradicts GAAP. She added that the ICABC has counselled Elections BC to remove references to GAAP and address these issues by Regulation. She says she is in favour of a double-entry system of accounting with Income Statements, Balance Sheets, supporting Schedules and appropriate disclosures. Mr. George added the Act does not ask for financial statements, but rather requires extracts from financial statements.

2) Ms. Johnson suggested streamlining the filing process for registered parties and constituency associations by producing a diskette to serve as a template for financial reporting. It would be designed to meet the requirements of the legislation and eliminate mathematical errors. Mr. Patterson added that in many locations in the United States, blank financial filing forms are posted on the Internet. A signed declaration, however, must be submitted separate from electronic financial filings.

Proposal - Section 224:

There may be significant information that would be disclosed in a supplementary financing report. It is important to recognize that possibility and have it reflected in this section.

Discussion:

Mr. Massey noted that the PDA's financial agent had asked for "some way of tackling an onerous or unreasonable request". Ms. Johnson replied that if a report is deficient and Elections BC asks for supplementals, if the entity doesn't comply, Elections BC would have only a deficient report for public disclosure.

Ms. Sanguinetti asked what would be the course of action if there was a genuine disagreement between the organization or candidate and Elections BC. Ms. Johnson replied that the organization or candidate could seek court relief.

Ms. Western noted that sections 221 and 223 provide for the deregistration of the respective candidate or constituency association if they do not file, and added that what is being suggested here is that section 224 be broadened to also apply to supplementals. Mr. Patterson said that supplementals may be significant and there needs to be a motivation to file them.

Mr. George asked why forms have to be refiled when a letter might suffice. Ms. Johnson agreed and replied that Elections BC is looking at Ontario which has some room to manoeuvre on this issue. The electoral administrators and the organization sometimes negotiate by telephone what form the supplemental is to take.

Ms. Western said she understands that the number of forms is intimidating. She stated that earlier she had a reluctance to change obvious errors in financial filings, as they are public documents. She has, however, reconsidered, and now notates obvious minor errors in pencil and sends them back with explanatory letters. Mr. Cockburn said that on occasion, these issues can be resolved during a short telephone call instead of a lengthy exchange of correspondence.

Proposal - Section 231:

1) Allow for a modified "authorization statement" in campaign electronic advertising.

It was identified during the election that the sponsor identification requirements are difficult to comply with, particularly with the electronic media. It is recommended that the Act be amended to permit, for example, the sponsor identification for a candidate or political party in media broadcasts to be replaced by something along the lines of "Sponsored by the [candidate name] / [party name] campaign," telephone [#].

2) Exempt buttons, caps, T-shirts, bumper stickers from authorization statement.

For many minor items of personal wear or use (buttons, caps T-shirts, bumper stickers), it is unreasonable to expect 'authorization' statements to be printed on these items. The Act should be amended to either exempt certain classes of such "advertising", or to specify the classes of advertising to which sponsor identification would apply.

Discussion:

Ms. Johnson mentioned a call she took during the election campaign from a pilot who flies aircraft that tow advertising banners. The pilot had questioned the practicality of the authorization statement on a banner. Regarding authorization statements on websites, Ms. Sanguinetti noted that some websites are authorized, and some are not.

Mr. Gardiner asked about new novelty items and advertising media and suggested a Regulation so that if new items were developed, an amendment to the Act would not be required. Mr. Patterson replied that if the classes were established by Regulation, it would have to be vetted by this Committee.

Mr. Patterson and Mr. Massey agreed that the name of the financial agent probably is not required as part of an authorization statement. Ms. Western cited cases where one financial agent died and others were replaced after the materials were printed.

Mr. Hallsor suggested a simple generic statement for all forms of advertising, to the effect of "authorized or paid for by the campaign for ..." He also suggested that the Act list what must have the statement attached, instead of a list of what does not need the statement.

Ms. Johnson added that "paid for" is closer to the intent of the Act, and might discourage overzealous supporters.

Questions from Committee Members:

Report by CEO:

Mr. Gardiner asked Mr. Patterson if it was his intent to put a report before the Legislature before the end of the current session. Mr. Patterson replied that this is his intention.

Party Logos on Ballot:

In response to queries at the last meeting about party logos on ballots, Mr. Patterson circulated a sample ballot showing party logos which was used at the last provincial general election in Prince Edward Island. Ms. Johnson added that it is becoming an international standard to have symbols on the ballot. She described black-and-white logos as benign, while underscoring their value for people with limited language skills. Mr. Hallsor noted that there is "still room for games." Ms. Johnson also noted that during the election, the office of the CEO received a number of queries from individuals asking for a "none of the above" box on the ballot, or a means to record an abstention.

Tax Receipts for Goods and Services:

Mr. Massey asked if it's illegal to issue tax receipts for goods and services given in lieu of rent, etc. Scenario: Instead of paying rent to you, I issue a tax receipt. The amount would be reported as an expense and a political contribution.

Ms. Western said that there has to be an exchange of money. Mr. Patterson noted that the *Election Act* here refers to the *Income Tax Act*.

Registration of Constituency Associations:

Mr. Gardiner said that it is the view of the NDP that registration should be compulsory, and that the law should be changed to compel. He also reiterated his support for the proposed clarifying amendment for consolidation of ancillary organizations, as all activities should be disclosed under this Act.

Mr. Hallsor says he disagrees, as some Reform constituency associations raised and spent under \$10,000 for the last election. For them, the minutia of the required record-keeping would be an undue burden. He says he feels that between elections there is no harm to democracy in allowing small groups of people to keep an organization together without having to register and record every detail of their revenues and expenditures. He added if contributors want tax receipts, these organizations would have to channel their donations through the (registered) provincial party, and therefore all contributions would be disclosed.

Ms. Sanguinetti noted that the BC Liberals have not registered their constituency associations, adding that the provincial party is no longer affiliated with the federal party. The constituency associations without a sitting MLA could become moribund, because the constituency associations don't have the kind of money required to maintain a higher profile. Most keep their money with the provincial party.

Volunteer Services as Political Contributions:

Ms. Sanguinetti asked that the Committee re-visit section 180 (5) (a) which states that services by volunteers are not political contributions, as she believes all should be seen as political contributions.

She also mentioned section 186 (2) (b). She mentioned situations where contributors have accounts with stockbrokers who send cheques to the party on behalf of their clients. Under current legislation, this is illegal. The party must return the cheque and have the contributor replace it with one written on a personal account. She asks that the legislation make this scenario

possible, providing the broker has the authority to forward the cheques.

Ms. Sanguinetti also suggests that section 186 (2) (b) be expanded to apply to organizations as well as individuals.

Classifying of Contributors:

Mr. George referred to section 190 with regard to classifying contributors. He notes that under section 190 (1) (e) and (f), there is no difference between a numbered corporation and a named corporation, as both are already registered under the *Companies Act*.

Ms. Sanguinetti raised the requirements to record the full name of contributors. Many contributors' cheques have middle initials rather than full names, and "it irritates beyond belief" to telephone these individuals and ask for their full name. Ms. Johnson replied that the intent is to ensure that cumulative donations do not go over limit. Mr. Patterson advised that this perhaps could be addressed administratively or by policy.

Mr. George asked for an amendment to either delete section 190 (f) "other contributors" or make it more specific. The following organizations were put forth as examples that fall into the "other contributors" category: Indian Bands, federal parties, cooperatives.

Control of Tax Receipts:

Mr. Brearley suggested that Elections BC supply a unique numbering sequence or block of numbers to each registered party or registered constituency association. Elections BC would then be advised which numbers have been used, have not been used, and which have been invalidated. Mr. Patterson replied that in other Canadian jurisdictions, the electoral entity gives the parties their tax receipts. Federally, the parties file copies of these receipts with Elections Canada. Ms. Johnson noted that this is an area of some concern, as at the beginning of last year's campaign period, a number of candidates who were familiar with the federal system were waiting to receive their receipts from Elections BC. She and Mr. Patterson stated that Elections BC will undertake further consultation on this with a view to managing the process without becoming more bureaucratic.

Adjournment:

The meeting was adjourned. No subsequent meeting was scheduled at this time.
